

# JURNAL AL-QADĀU

PERADILAN dan HUKUM KELUARGA ISLAM

## Formulation of Water Rights Policies as Basic Rights

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Info Artikel	Abstract
<b>Diterima</b> 29 Maret 2021	<p><i>This study aims to analyze the formulation of water rights policies as basic rights. The research method is normative legal research research with legislation and conceptual approaches through the Library Research. The results of this study are in regulating the water resources sector in Indonesia, readiness is needed from all aspects in order to support the need for clean water as the most vital requirement. The legal settings are not only formalistic but also objective. The national policy formulation of water rights starts from ratifying The International Convention on Economic, Social and Cultural Rights (Ekosob) in 2005 through the Republic Indonesia Law Number 11 of 2005 concerning Ratification of International Covenant on Economic, Social and Cultural Rights. The birth of the Republic of Indonesia Law number 11 of 1974, followed by the Indonesian Law Number 7 of 2004 and the Republic of Indonesia Law Number 17 of 2019 had given birth to a shift in water meaning from each law. Likewise with the implementing regulations, namely Government Regulation Number 22 of 1982, Government Regulation Number 42 of 2008, Government Regulation Number 16 of 2005. At the level of the Ministerial, born ESDM Ministerial Regulation Number 31 of 2018, PUPR Ministerial Regulation Number 15 of 2018, PU Ministerial Regulation Number 2 of 2017. At the Regional Government Regulations level, such as Makassar City Government Regulations Number 6 of 2016. At The Village Government Regulation such as in South Sumatera, Born Karang Agung Village Government Regulation Number 7 of 2018</i></p>
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## A. INTRODUCTION

Every World Water Day commemoration that falls every March 22th, the fundamental thing that will be immediately thought of is about the protection of the state towards the fulfillment of its citizens' rights, in the framework of the state must carry out its obligations to fulfill human rights in the form of respect (to respect), protect (to protect), and fulfill (to fulfill). World water day every year is commemorated in the atmosphere and the condition of the fulfillment and protection of the right to clean water

that has not improved from year to year. The occurrence of crises and scarcity of clean water, both quality and quantity in the world all over the world then encourages changes in the way of perspective against water. The right to water is a nature rights, which is a form of recognition of the right itself. Water rights are human rights that are not coming from the country, certain ecological contexts of human existence that leads to water rights.

The scarcity of clean water then appears as a serious problem in many countries due to the availability of water that is not comparable to the need for water itself. In addition to its unfavorable management, coupled with its government policy that has not been well formulated. In Indonesia, the existence of article 33 paragraph (3) of the 1945 Constitution in 1945 if seen from the philosophical foundation, where the philosophical foundation of a laws and regulations in principle There are two views. The first view states that the philosophical foundation is the foundation relating to the basis or the country's ideology, namely the values (legal ideals) contained in the Pancasila. While the second view states that the philosophical foundation is a view or main idea that underlies the contents of legislation is an incarnation of the 5th (five) pancasila sila, namely social justice for all Indonesian people.<sup>1</sup> The principal of this social justice is based on the awareness that humans have the same rights and obligations to create social justice in people's lives.

The earth is the only planet to be the place of living things to live, grow and develop. Based on data released by the United Nations, 70% of the earth's surface consists of water. But from all the water, 97% is salt water and the remaining 3% is fresh water. The distribution of water is still divided into ice, ground water, surface water and water vapor. From the fresh water, not all are worth consuming. So it can be said of 3% there is water contaminated by humans. at the division, not all areas have enough water portions.<sup>2</sup> The importance of paying attention to various problems caused by the lack of access to clean water. In 2003, WHO issued a publication titled *The Right to Water*. In this publication WHO stated that of the 6 billion earth residents, 1.1 billion it did not have sufficient access to safe drinking water, where the lack of access brought a continuation, which was blocked by fulfilling the right to other health and human rights such as adequate rights to food and residence.<sup>3</sup>

The world noted, a real example of a water crisis that occurred in mid of 2019 was the worst water crisis that hit the capital of Manila Philippines. It was reported that Manila was now hit by the worst lack of water in recent years, after channels in resident homes stopped flowing water. Residents were forced to queue and wait for hours of water transport trucks to their territory. In addition to residents' houses, the water crisis also hit a number of hospitals in the capital city and forced the manager to make adjustments to handling for non-urgent cases needed water and needed additional supply from water trucks due to this crisis. Plus, at least one hospital limit patient receipts. Now,

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<sup>1</sup> [Juajir Sumardi](#), *Gerakan Akademik Untuk Kedaulatan Migas Indonesia*, (Makassar: Arus Timur, 2017), p. 95.

<sup>2</sup> [www.desalite.co.id](http://www.desalite.co.id), accessed on date August 3, 2020 at 07.00 wita.

<sup>3</sup> World Health Organisation, *The Right to Water*, (Perancis: WHO, 2003), p. 3.

even though the water has flowed again, the taps often dry out, from 4 to 20 hours per day because of rotating blackouts triggered by water scarcity and inadequate infrastructure. When citizens are more spent to make sure they have enough water than doing anything else. In 2018 there was almost a lack of the worst water in history in Manila, but was saved due to storm. This crisis is feared that it can last until next July, waiting for the Rain of Monste to fill the local reservoirs, where one of them is at the lowest level for the past two decades.<sup>4</sup>

Nationally, according to the Ministry of National Development Planning / National Development Planning Agency (PPN / Bappenas) in 2019, in fact in Indonesia, even though almost all regions experienced a prolonged clean water crisis every year, the island of Java needs to get "extra" attention because The level of population density with high economic activities that achieves economic growth of 5-6%, so that it automatically requires high clean water. While on the other hand, clean water sources are very limited. This results in the community depending on wells. Even though it can be said that the well that later has an effect on one of the decline in land that can make Rob floods occur especially the north coast of Java. Although the water crisis in the dry season is experienced in almost all regions in Indonesia, but when compared to Java, for outside the island of Java, there is no serious issue about clean water. Because, there are still many water sources, on the other hand economic activity unlike big cities in Java. Other islands, in addition to its use are not too high, the water source is still a lot, which still needs to be strengthened is its distribution. Unlike on the island of Java, the issue is not only distribution but the source is lacking.<sup>5</sup>

Urban areas or other regions that have enough water supplies, where most people think free or cheap water and the amount is abundant so it is less valuable. It is estimated that in 2008, in Indonesia only 48% of the total area of urban and 12% of the total rustic area. The service received clean water. The population growth marked by increasing economic activity of society, has a significant influence on the availability of clean and healthy water. The clean water crisis is because the distribution of water is not evenly distributed. In the coming decades of water needs continue to increase along with the increase in population.<sup>6</sup> In Indonesia, with a population of more than 200 million, it is estimated that water consumption trends rose to 15-35 percent per capita per year. This is precisely inversely proportional to the availability of water which tends to slow down and decrease due to various factors. There are around 119 million Indonesian people do not have access to clean water. This means that only around 20 percent can access, even then the new urban area. Means, there are 82 percent of the Indonesian people who access water inadequate. This condition can cause disruption, damage, and danger for all living things that depend on the water resources.<sup>7</sup>

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<sup>4</sup> <https://internasional.kompas.com/read/2019/03/15/23325151/krisis-air-terburuk-melanda-ibu-kota-filipina>, accessed on date August 3, 2020 at 07.00 wita.

<sup>5</sup> <https://m.detik.com>, artikel "Prabowo sebut Indonesia Bakal Krisis 2025", accessed on date August 3, 2020 at 07.00 wita.

<sup>6</sup> UNESCO, *The United Nation World Water Development Report*, (New York: UNESCO, 2014), p. 2.

<sup>7</sup> Effendi H., *Telaah Kualitas Air Bagi Pengelolaan Sumber Daya dan Lingkungan Perairan*, (Yogyakarta: Kanisius, 2003), p.4.

In Makassar for fulfilling clean water, many housing experienced difficulties experienced for years. In certain housing, the water supply through the PDAM can only be felt during the rainy season, it starts at 9pm to dawn. Apart from that residents can only use groundwater sucked from the well of drill or dug well through the machine. Efforts through drilling wells or digitals actually violate environmental laws because they explore the ground to meters. Not to mention it can only get a spring from the closest distance of 10 meters, depending on the height of the location of the residents' house. Even then it's not necessarily a spring. Plus the fees must be incurred by residents to explore drill wells or excavations of around 400 to 500 thousand rupiah per meter. Moreover, housing in the reclamation area, where the water is still mixed with salt water (brackets).

Although the availability of water in Indonesia is abundant and recognized by the world, not all of them all meet the criteria of clean and healthy water that are worth consumption. The problem is different in each region. In East Indonesia, for example, the problem of the water crisis is assumed because of the low rainfall. Unlike the West Indonesia region, the issue lies in the lack of water quality, the water supply is carried out by the PDAM. Water quality is influenced by inadequate water conditions that result in increasing opportunities for disease. In also access, in certain areas, children and women are often used to collect water. Residents in the village or suburbs even have to walk tens of kilometers just to get clean water. Many rural areas, surfaces and underground water supplies have been far downhill and many sources of springs are polluted. This resulted in the agricultural and plantation sectors not optimal production. In fact, not a few have a crop failure due to the scarcity of clean water and dry agricultural land is a problem also continues to emerge. Unlike the people in the city that use water and get it easily because it uses advanced technology.

Difficult access due to a clean water crisis is mostly due to the ecological damage factor that starts with water exploitation which is carried out uncontrollable and damaging the environment in broad coverup. Funding for operations and the development of clean water distribution networks is also considered one of the triggers because of the not least. Management of PDAMs that do not cover all regions, the use of bottled water (AMDK) is increasingly developing that automatically exploits sources of springs. The birth of conflicts over the struggle for water resources in the community caused by the spread of its division, whether because of natural factors or because there are those who exploit and exploit ground water excessively add to the cloudy problem of clean water. For example, the construction of a hotel or shopping center, which should be when looking for water sources and digging it, restrictions through its permission. Construction of places like this usually occurs with residents around the place. Conflicts like this which then encourages the state to issue policies by assigning water as a need (human need) and rights (human right).

Forecast in the upcoming 2025, almost two-thirds of the earth's population will live in areas experiencing water shortages. This prediction was reported from the World Water Assessment Program (WWAP) which was the UNESCO formed body.<sup>8</sup> The Committee of the Social and Cultural Economic and Culture (Ekosob) in PBB general

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<sup>8</sup> <http://www.unesco.org/new/en/natural-sciences/environment/water/wwap/wwdr/>, accessed on date August 3, 2020 at 07.00 wita.

comments number 15 was also in 2002, stating that Indonesia had the same liability as other countries in maintaining the existence of clean water in the community. These comments provide a clearer interpretation of Article 11 and 12 that the right to water cannot be separated from other human rights. The right to water also includes the freedom to manage access to water. In its legal regulation, institutional instability or lack of institutional and social structures has caused the management of water resources integrated into difficult. By using the integrated approach, it is often not well coordinated and directed due to lack of transparency and accountability. Besides the application of the principles of neoliberalism that dominated the development policy that began in the early 1980s, and installation affected the management in the water sector.

In the future, the management of water resources not only views the quality and quantity. But it requires a comprehensive, integrated and independent handling. Administrative work must be fully carried out by the government as a regulator, the facilitator is not only As providers, decentralization of authority management and development and recognize human rights for access to water resources. The importance of bringing together the similarity of opinions that a fundamental policy formulation must be carried out for the related parties starting from the implementing regulations. The Republic of Indonesia Law Number 17 of 2019 concerning Water Resources has been ratified, then now what must be done is immediately reinforced in the form of implementation that is integrated in depth and thoroughly with other fields. Based on the background, the author formulates the problem becomes "What is the formulation of water rights policies as basic rights?"

## **B. RESEARCH METHOD**

This study uses normative legal research. This study will answer legal issues which are processes in finding legal rules, so that they will give birth to arguments or concepts as a guide to resolve the problem of this study. The approach used in this study is the approach that will be used in this study, among others; Approaches of legislation and conceptual approach.<sup>9</sup> This research is a scientific process or stage that aims to find the rules, principles, and doctrine of the law to answer the legal issues in this study, so the method of normative legal research has a positive legal inventory including the principles and legal doctrine, making discoveries Law in concrete, systematic cases, checking comparison synchronization and historical or legal history, using the legislation and conceptual approach approach with search library (Library Research).

## **C. DISCUSSION**

### **1. Stages in Policy Formulations**

Understanding in doing policy formulation is one of the important stages in the formation of public policies. According to Charles Lindblom,<sup>10</sup> some other experts, to understand the policy formulation process, it is necessary to first understand the actors involved or actors and in the process of forming the policy, both official actors and actors who do not official. That to understand who actually formulates policies must be

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<sup>9</sup> Peter Mahmud Marzuki, *Penelitian Hukum Edisi Revisi*, (Jakarta: Kencana, 2005), p. 133-134.

<sup>10</sup> William N. Dunn, *Pengantar Analisis Kebijakan Publik*, (Yogyakarta: Gadjah Mada University Press, 1999), p. 26.

understood the properties of all actors and (participants), what parts or roles they do, authority or form of power they have, and how they are interconnected and supervise each other. Of the various types of cast and, each actor and this according to Lindblom has a special role that includes as a regular citizen, organizational leaders, members of the DPR, leaders of the legislature, party activists, party leaders, judges, civil servants, engineers, and managers business world.

Public policy must be reduced in a series of implementation instructions and technical instructions that apply internally in the bureaucracy. While in terms of society, what is important is the existence of a public service standard, which describes the community what services are their rights, who can get it, what are the requirements, as well as the form of the service. This will bind the government (state) as a service giver and the community as a recipient of the service. Policy According to James E. Anderson, namely: a series of actions that have certain goals followed and carried out by a person perpetrators or groups to solve a particular problem. The term public policy is more often used in relation to government actions or activities.<sup>11</sup>

Public policy is an act carried out by the government in order to achieve goals and objectives for the benefit of the entire community, which is able to accommodate the values that develop in society, both carried out or not done, this understanding is in line with Islamy's opinion which states that state policy is a series The action set and carried out or is not carried out by the government that has a goal or oriented to the interests of the entire community. The country's policy can be in the form of legislation that is used for the purpose, the target of the program program and actions taken by the government.

Policy formulations greatly pay attention to the properties of formulating public problems. The formulation becomes a big fundament in formulating public policy so that the direction is right, precise and appropriate. According to William Dunn, it will greatly help policy analysts in finding hidden assumptions then diagnosing the cause, mapping its possible goals and combining them with contradictory views and designing new policy opportunities.<sup>12</sup>

Policy formulations are related to several things, namely the problem (especially public problems), how to formulate proposals that respond to certain problems that arise and how to choose an alternative to overcome public problems.

Stages in policy formulations are:

a. Formulation of the problem

To recognize and formulate problems is the most fundamental step in policy formulation. To be able to formulate policies well, then public problems must be recognized and well defined. Public policy is basically made to solve problems that exist in society. Therefore, how much contribution given by public policy in resolving problems in society is an interesting question in public policy evaluation. However, the problem solving satisfies or does not depend on the accuracy of the public problems is formulated. It can be said that we often fail to find the right solutions to find the right problems.

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<sup>11</sup> Islamy, *Prinsip-prinsip Perumusan Kebijakan Negara*, (Jakarta: Bumi Aksara, 1997), p. 67.

<sup>12</sup> William Dunn, *Pengantar Analisis Kebijakan Publik*, p. 26.

b. Policy Agenda

In the policy agenda, the urgent public problems will be included in the priority list. There are certain conditions that must be fulfilled so that a problem is considered important and urgent to complete the problem solving immediately. Every agenda of the problem in the community will compete with each other to be resolved. The requirement to be fulfilled is, the impact on the community and the need for handling must be done soon. The government will try to compile a number of important agendas to be discussed and used as the subject matter of the formulation of public policy. Masalah which entered the agenda could include government routines, problems in the community (which have long lasted) and new problems occur in the community. Public issues that have entered into the policy agenda will be discussed by policy makers, such as legislative circles (DPR), executives (presidents and ministers), government agencies and may also be judicials. These problems are discussed based on the level of urgency to be resolved immediately.

c. Alternative selection of policies to overcome problem

After public problems are well defined and policy makers agree to incorporate the problem into the policy agenda, then the next step is to solve the problem. Here policy makers will face alternative policies that can be taken to solve the problem. At this stage the policy makers will be faced with the battle of interests between the various actors involved in policy formulation. Conditions like this, make policy choices will be based on compromise and negotiations that have an interest in policy making.

d. Determination of policies

Decision making on the alternative has been taken, the solution to the problem has been determined through the selected policy that has a binding legal force. As mentioned earlier that alternative policies taken are basically a compromise of various interest groups involved in the formation of the policy. Determination of policies can be shaped in the form of law, jurisprudence, presidential decree, ministerial decisions and so forth.

## **2. Formulation of Water Rights Policies as Basic Rights in Indonesia**

It should be realized that the study of water has different characteristics with other fields of study. This is due to the object involving natural resources which are public property which if there is a violation in it, it is considered to violate the basic human rights. So thus a humanist, effective and efficient policy is needed. The study also involves multidisciplinary or many field disciplines. Starting from planning to the evaluation. In order to achieve a satisfactory evaluation, it began to be sent on analysis, aspects that are considered by factors that have a direct effect on the implementation of clean water supply technology and sanitation. Some aspects that must be considered in choosing appropriate technology are social, health, technology, economic, financial, institutional, and environmental aspects.

Aspects that influence the selection of clean water supply technology and sanitation include technical, environmental, institutional, community and managerial aspects, and financial aspects. Selection of clean water supply technology for example, we can make references on the concept model built by the Institute Cinara of Universidad del Valle



Colombia.<sup>13</sup> The policy formulation about the right to water starts from ratifying the international convention that contains rights related to the right to water. Although basically our Constitution has contained articles relating to these basic rights, through ratification, it will strengthen its position when the law will be formed. Then its derivative legislation was formed. After being published by the law, followed by the issuance of Government Regulations, Ministerial Regulations, Regional Regulations and the last level are Village Regulations.

World community awareness of problems arising related to available clean water resources, began to emerge in the 1970s. This continued to grow until in 1972 the problem of water resources was a concern in the United Nations Conference on Human Environment held at Stockholm. The conference produces *Stockholm Declaration on human environment which is one of the principles* Adopted in it states that water is a natural resource that must be maintained in addition to other natural resources such as air, land, flora and fauna and must be managed carefully for the present and future generations. In writing mention in Principle 2 of the Stockholm Declaration on Human Environment that:

*"The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate"*.

The same rights are also recognized in The Universal Declaration of Human Rights (Duham) adopted in 1948. This recognition is contained in Article 25 Duham that:

*"Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstance beyond his control."* (<http://www.un.org/en/documents/udhr/index.shtml#a25>)

Especially in paragraph (1) which essentially states that:

*"The State Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health."*

Which means that "everyone has the right to sufficient health and well-being for his family and his family".<sup>14</sup> Recognition of the right to water as human rights have been formulated in the WHO Constitution in 1946. In the constitution, WHO does not specifically mention the right of water but the right to enjoy the highest health standards that can be achieved, which is written that:

*"The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic, or social condition"*

Then in 1977, the United Nations held a Mar del Plata Water Conference in Argentina which specifically discussed water resource issues. This conference gave birth

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<sup>13</sup> Yerry Budiman, Sarah Sambiran, Johannis Kaawaoan, *Kebijakan Pemerintah Desa Dalam Pengelolaan Air Bersih Di Desa Kalekuba Kecamatan Tabukan Utara Kabupaten Kepulauan Sangihe*. (Ejournal.unsrat.ac.id. Jurnal Eksekutif Vol.1, No. 1 2017).

<sup>14</sup> <http://www.worldlii.org/int/other/UNGARsn/1966/65.pdf>, accessed on date August 3, 2020 at 07.00 wita.



to the Mar Del Plata Action Plan which included a recommendation and resolution concerning water resource issues such as assessment of water resources, water utilization and efficiency, environmental and international cooperation, regional and international cooperation to the issue of research and development, water supply for the community, water utilization for agricultural needs and river problems.

The concept of water rights can also be found in this Action Plan. Resolution II about the Community Water Supply, which completely stated, "Considering That: a. All Peoples, Whatever Their Stage of Development and Thoreir Social and Economic Conditions, Have The Right To Have Access To Drinking Water In Quantities And Of A Quality Equal To Thirs Basic Needs. " The Community Water Supply as part of the Action Plan produced at this conference states for the first time on the right to access to drinking water. This resolution load is considered the initial milestone of the debate about the right to water. Furthermore, in January 1992, the International Conference on Water and the Environtment was held in Dublin, Ireland, giving birth to the Dublin Statement on Water and Sustainable Development Principle 4 in the Dublin Statement called water having an economic value so that it was considered an economic object. Even so, the statement states that the basic rights of all humanity for access to clean water and sanitation with affordable costs is the main thing that must get attention first.

*Dublin Statement* It is not only about water as an economic object that has an economical value but also recognizes the right to humanity to get it at an affordable cost. One note that needs to be considered is that *Dublin Statement* Do not view access to clean water as non-cost access but access at affordable costs (*affordable price*). While at the conference at Rio de Janeiro, Brazil, which was held by the United Nations, *Conference on Environtment and Development* (UNCED) or more known with Rio Summit in June 1992, giving birth to agenda 21 about *Program of Action for Sustainable Development*. In this program there is a special chapter, Chapter 18, which regulates the right to water. *Chapter 18* it also supports resolution *Mar del Plata*.

Telantang Air Reviews in various resolutions and declarations are quite representative of water or rights to access to clean drinking water in a water perspective as a basic human need. Even though there is no formulation that states water as human rights. But the statement that water is human rights mentioned in the resolution of the UN General Assembly about *The Right to Development* in 1999. The resolution states that in realizing the right to development "the right to food and clean water is a fundamental human rights. Human rights law has adopted the right of everyone on water as a fundamental human rights. That water is an inseparable part of human rights itself. Implicitly, this right is articulated in the International Convention on Economic, Social and Cultural Rights (Ekosob) Main article 11 that:

*"hak atau standar kehidupan yang layak disatu sisi dan kewajiban negara untuk memenuhinya di sisi lain"*. (rights or living standards that are worthy of the side and liability of the state to fulfill it on the other side).

Then chapter 12 that:

*"hak atas kesehatan rohani dan jasmani, yang salah satu unsur terpenting di dalamnya adalah soal kesehatan lingkungan yang berkoneksi erat dengan air"*. (The right to spiritual and physical health, which one of the most important elements in it is a matter of environmental health that connects closely with water).

This explicitly in general comment 15 of the Convention. This right later in the International Covenant on Economic, Social and Cultural Rights (ICESCR) and international Covenant on economic, social and cultural rights, especially in Article 12 paragraph (1). International Covenant on Economic, Social and Cultural Rights adopted in New York through the resolution of the UN General Assembly 2200A (XXI) on December 16, 1966 and came into force on January 3, 1976. Indonesia has ratified the Covenant with the Republic of Indonesia Law Number 11 Year 2005 concerning Ratification of International Covenant on Economic, Social and Cultural Rights (International Covenant on Economic, Social and Cultural Rights), LN No. 2005 Number 118, No. 4557.<sup>15</sup>

The right to water has been very clearly included in the absolute guarantee category to meet decent living standards, especially because this right is one of the most fundamental conditions to be able to survive. that water includes a human rights contained in Article 11 Paragraph 1 General Comment No. 6 of 1995. Increasing community income and development in all fields demanding the fulfillment of the need for water which also continues to increase. However, if it continues to be used and not well managed, the longer the availability of clean water will decrease. Each of us must take a role. The state is not only by strengthening its regulations, but also in the arrangement and in the resource management system. Although it is not entirely wrong in the aspects of the designation but has been wrong in the manager's aspect. In a substance, the rules have regulated that the government as a clean water manager absolutely submitting its management to BUMN and BUMD. But what is now happening is the management of clean water resources for packaging (AMDK) and other clean water allotments, 80% has been managed by national and foreign private. No longer states that manage. Existing water resources are only intended to meet the economic value but do not meet its social value.

Through Article 33 formulated in paragraph (3) of the state law of the Republic of Indonesia in 1945, the state has provided guarantees of the fulfillment of people's rights to clean water that:

*“Bumi dan air dan kekayaan alam yang terkandung didalamnya dikuasai negara dan dipergunakan sebesar-besarnya kemakmuran rakyat”* (Earth and water and natural wealth contained in it controlled by the country and used as much as possible people's prosperity)

The original intent or called the original intent of this article is where the country when forming this article 33, wants to provide direction of water resources in mastery by the state, the branches of production are important and master the livelihood of many people related to natural resources in this case the source Water power and people's prosperity. Article 33 is a foothold, which is fundamentally convincing the people that even though there is a basic law in the field of an economy that is expressed in this article, but there is still protection against the rights related to the need for clean water, which is realized through the role of the state as the ruler so that management and availability Sustainable water resources can realize the ideals of prosperity and people's welfare.

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<sup>15</sup> <http://www.ohchr.org/en/Professionalinterest/Pages/CESCR.ASPX>. accessed on date August 3, 2020 at 07.00 wita.

According to Jimly Asshiddiqie in the book from Majda El Muhtaj,<sup>16</sup> that the state is considered unable to give up his responsibilities to improve the welfare of the community and obliged to protect its citizens. Still according to Jimly Asshiddiqie, that the emergence of capitalism in the field of the economy caused a gap in the distribution of prosperity sources. According to him, it has an impact on sharp socio-economic disparities and cannot be solved by the state that is minimally functioned. Protect in the concept of "legal protection" has special meanings as an action institution or The government is in the form of regulations, policies or decisions made in the context of respect, recognition, fulfillment and promotion of the interests of citizens' interests.<sup>17</sup>

The constitutional foundation became a factory point of the existence of the national economy business that was seen in a number of laws in the field of natural resources. Likewise, the problem that is often raised in the legislation in the field of water resources, as long as it is related to article 33 paragraph (1), (2) and paragraph (3) are: (1) State mastery of water resources, (2) Guarantees aimed at the greatest prosperity of the people, and (3) the role of private / capital / investors in the economy deals with water resources. Article 33 is a place where three problems are intended and evaluated. The problem, at the level of political superstructure will direct the debate between the concept of public control faced with the concept of civil ownership from the country to water resources and the consequences of legal relations which empty for regulatory wills.

In addition to Article 33 paragraph (3) of the 1945 National Constitution, which speaks of the position of the state when dealing with the interests of the people, then the fulfillment of the rights of residents over water then gets one more footing through other regulations in the 1945 National Constitution related to the right to water Article 28A, which is very clear illustrate that the state guarantees protection and respect for the implementation of human rights for its citizens, especially in the field of social rights, which when it starts from article 28A: "*Setiap orang berhak untuk hidup serta berhak mempertahankan hidup dan kehidupannya*".

(Everyone has the right to live and has the right to defend his life and life).

Then article 28H paragraph (1) that:

*"Setiap orang berhak hidup sejahtera lahir dan batin, bertempat tinggal, dan mendapatkan lingkungan hidup yang baik dan sehat serta berhak memperoleh pelayanan kesehatan"*.

(Everyone has the right to live in a prosperous and inner life, reside, and get a good and healthy environment and has the right to obtain health services).

From this provision can be withdrawn a broad meaning into the fulfillment of the right to water. It is true that Right to A Healthy Environment has a positive relations into an effort to Enfor The Right to Water.<sup>18</sup>

With the right to life (the right to life) which is part of civil rights is to become an inseparable unit, The Right to Life can also be interpreted that everyone has the right to

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<sup>16</sup> Majda El Muhtaj, *Hak Asasi Dalam Konstitusi Indonesia Dari UUD 1945 Sampai Dengan Perubahan UUD 1945 Tahun 2002*, (Jakarta: Kencana Prenada Media Group, 2002), p. 22.

<sup>17</sup> Takdir, *Perlindungan Hukum Bagi Warga Miskin Dalam Memperoleh Hak Pelayanan Kesehatan yang Berkeadilan*, (Makassar: Program Pascasarjana Universitas Hasanuddin, 2014), p. 36.

<sup>18</sup> Majda El Muhtaj, *Dimensi-Dimensi HAM Mengurai Hak Ekonomi, Sosial, dan Budaya*, (Jakarta: Rajawali Pers, 2009), p. 136.

his life and to continue his life must certainly be supported by welfare, where It can be interpreted that everyone can meet the most fundamental needs of his life, namely by decent water rights. The description is then more emphasized in Article 9 paragraph (1) of the Republic of Indonesia Law No. 39 of 1999 that:

*“Setiap orang berhak untuk hidup, mempertahankan hidup, dan meningkatkan taraf kehidupannya”.*

(Everyone has the right to live, maintain life, and improve the level of life).

Articles of each of the legal settings which are then considered to strengthen and become interrelated between countries and citizens in fulfilling their citizens' rights on the clean water.

The basic concept of sustainable development in the management of water resources through the interpretation of Article 33 starts from the government's policy on water, such as how to provide clean water that has a fair and evenly distributed principle or protection of the fulfillment of the rights to the water to achieve human well-being and Sustainable socio-economic development. Environmentally-insightful sustainable development is one of the steps taken in an effort to utilize natural resources to advance general welfare as mandated in the 1945 Constitution and to achieve life happiness based on Pancasila.

Agrim about this, there are 17 sustainable development goals (*Sustainable Development Goals (SDG's)*). The UN General Session which took place September 25, 2015 in New York, the United States (US) has officially set a sustainable development agenda or SDG's as a global development agreement. 17 (seventeen) Sustainable Development Goals (SDG's), one of which is the sixth SDG's goal is "clean water and sanitation".

Formation of the Republic of Indonesia Law No. 7 of 2004 concerning water resources which was later canceled through the decision of the Constitutional Court of the Republic of Indonesia Number 85/PUU-XII/2014 and was disallowed with the re-implementation of the Republic of Indonesia Law No. 11 of 1974 concerning Irrigation and RI PP No. 121 of 2015 concerning the Concession of Water Resources is a form of prevention of legal emptiness to the formation of a new law. It needs to be a common realize that this law was made 45 years ago, so that there was indirectly a non-fulfilled factor, which then had to be considered to form a new law.

After the cancellation of the Republic of Indonesia Law No. 7 of 2004, the question of the question of the basis of water resource management includes a contract that underlies the concession of water resources by the private sector that occurred at that time which of course followed his law. The consequences of this cancellation were legislative and the government must immediately issue regulations New as a "legal umbrella" management of water resources. The entrepreneurs then hoped that the PPPU was immediately published as "his legal umbrella".

Return of the Republic of Indonesia Law No. 11 of 1974, did not dampen the government's steps in further strengthening legal arrangements in the water. Legal vacuum caused by the cancellation of the Republic of Indonesia Law No. 7 of 2004 then gave birth to acts legislation in the form of the Republic of Indonesia Law No. 17 of 2019 concerning Water Resources. This step is then a fresh breeze because this law still pays attention to the right to water as the highest rights to support the sustainability of development that provides fair and dignified benefits. The creation of legal certainty for

the use of water resources for the implementation of protection and fulfillment of water rights through the Republic of Indonesia Law No. 17 of 2019 involves community participation including indigenous peoples, ranging from planning, implementing and evaluating utilization.

State mastery in managing water resources remains nominated. If previously in RI PP No. 42 of 2008 stipulates that the government as a clean water manager is absolutely submitting its management to BUMN and BUMD. While the private sector only gets the opportunity according to the rules if it is considered many that cannot be managed. Surely the private sector is given strict conditions to keep the PP substance.

The regulation formed by the government regarding the fulfillment of the right to clean water starts from the level of law to the implementing regulations at the level of village regulations, it is actually available. But it turns out this also does not guarantee the implementation of the laws and regulations. There are still many regions in Indonesia which from year to year experience a clean water crisis, even though they are a region with springs or clean water sources.

Comprehensively, Indonesia faces at least 6 (six) problems with clean water, namely the availability of clean water resources, access to clean water resources, principles and clean water resource systems, technical and scientific aspects of their legal settings, institutional aspects and mechanisms, Aspects of the participation of society, and aspects of regional autonomy. If it is observed further, all the problems lead to regulations that have not worked. So it is expected to strengthen the role of the state in providing the right regulation.

Management of existing water resources to date is still experiencing fundamental problems. Amid the problems there are more water resources that are increasingly scarce this availability actually arouses efforts for investors to reap greater profits. While most people are still being complacent, it is less concerned, surrender to the management of water resources that are. In theory, in terms of water resources as long as we are able to manage it when the rain and dry music resources will remain safe (Arizona, 2017: 1-2).<sup>19</sup>

Has since long regulations related to the fulfillment of the right to clean water at the supranational level to the arena of attraction of interest between the human rights regime through United Nations (UN) and the market regime through the World Trade Organization (WTO) and the International Monetary Fund (IMF) along with various other supranational organizations which is formed to smooth the market interest in the water.

The perspective of the concept of human rights, in terms of state relations with its citizens, the people are positioned as rights holders, while on the other hand the country is domiciled as a duty holder. Where fundamental state obligations are protecting and guaranteeing the human rights of their (people) where one is the right to water, seeking positive fulfillment or guaranteeing public access to healthy water for all its needs ranging from household affairs, irrigation and other production affairs.<sup>20</sup>

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<sup>19</sup> Yance Arizona, *Jihad Berkonstitusi: Muhammadiyah dan Perjuangan Konstitusional Melawan Komodifikasi Air*, (Yogyakarta: Wacana, 2017), p. 1-2.

<sup>20</sup> Dalil Pemohon dalam Putusan Perkara No. 58\_59\_60\_63\_2004 dan Perkara No. 08\_2005 tentang Pengujian Undang-Undang Nomor 7 Tahun 2004 tentang Sumber Daya Air melalui <http://www.hukumonline.com>, accessed on date August 3, 2020 at 07.00 wita.

Government Regulation Number 22 of 1982 concerning Water Management as Implementation of the Republic of Indonesia Law No. 11 of 1974, regulating the implementation of water fixing.

Includes all efforts to regulate coaching such as ownership, mastery, management, use, exploitation, and supervision of water and the source, in order to achieve benefits as much as large in fulfilling the people's lives.

Government Regulation Number 16 of 2005 concerning Drinking Water Supply System provides a large entry room in water management. This Regulation as an Acting from Article 40 of the Republic of Indonesia Law No. 7 of 2004. This development arrangement was held in an integratedly with the development of sanitation infrastructure and facilities related to drinking water which was held based on the principle of sustainability, balance, general benefit, integration and harmony, sustainability, justice, independence, and transparency and accountability for the realization of management and Quality drinking water services at affordable prices, achieving balanced interests between consumers and service service providers and achieving increased efficiency and coverage of drinking water services.

At the Ministerial Regulation, Born Regulation of the Minister of Energy Resources and Minerals Number 31 of 2018 concerning Guidelines for Determination of Land Water Conservation Zones and Pupr Candy Number 15 of 2018 concerning Indonesia's National Work Competency Standards for Management of Drinking Water Supply Systems, PU Candy Number 2 Year 2017 Organization and work procedures for the National SDD Council Secretariat.

The Ministry of Public Works and Public Housing through the Directorate General of Cipta Karya Directorate of Development of Drinking Water Supply System issued a policy of implementing a drinking water supply system in 2018 by standing in Article 33 paragraph (3) and Article 28H paragraph (1) with the aim of 2017 achieved 72, 04% of the access of national drinking water services with the RPJMN Indonesia that 2015-2019 achieved 100% Universal Access in drinking water sector supported by the 6th (six) clean water from the Sustainable Development Goals (SDG's), namely "guaranteeing the availability and sustainability of management Water". The main indicator of the 2015-2019 RPJMN is 100% drinking water, 0% slums and 100% sanitation.

Whereas at the level of regional regulations, there have been several regions that issue regulations related to the right to water. Like the Ambon City Regulation Number 8 of 2018 concerning Management and Development of Drinking Water Supply Systems. That the Ambon City Government in accordance with its authority, is responsible for ensuring the fulfillment of public rights to drinking water and access to drinking water to meet a healthy, clean and productive life. And to ensure the fulfillment of community rights to drinking water and access to drinking water effectively, efficiently and sustainably need to be held through the management and development of drinking water supply systems. The basis of the establishment of this Regional Regulation is Article 18 paragraph (6) of the Republic of Indonesia of the Republic of Indonesia in 1945 and Law Number 60 of 1958 concerning Determination of Emergency Law Number 23 of 1957 concerning the Establishment of Level II Swatantra Regions in the Regional Region Swatantra Level I Maluku (State Gazette of the Republic of Indonesia in 1957 Number 80) as a Law (State Gazette of the Republic of Indonesia in 1958 Number 111, Supplement to State Gazette Number 1645).

The publication of a regional regulation related to each other is expected to support the fulfillment of the right to water. Like the Makassar City Government. By issuing regional regulations number 6 of 2016 concerning non-cash investment in the Makassar City Government to the Makassar City PDAM, the PDAM as one of the BUMDs given by the authority to manage clean water in the city of Makassar, is expected to be able to improve the service and facilities and infrastructure of clean water in the city of Makassar. The capital participation of non-cash government is in the form of a grant with the aim that PDAM debt to the central government can be resolved properly.

At the village regulations, for example in South Sumatra, Born Karang Agung Village Regulation Number 7 of 2018 concerning Conservation of Water Sources and Management and Utilization of Clean Water held in order to maintain and maintain the sustainability of clean water facilities and infrastructure in Karang Agung Village so that control is needed and control in this case. For the sake of carrying out this control and control, it is sought through empowering the potential of the original village source, one of which is the source of the spring in the village. This village regulation is held based on the provisions of Article.

## **D. CLOSING**

### **Conclusion**

Formulations on water rights policies as basic rights begin with ratification of the Republic of Indonesia Law Number 11 of 2005 concerning Ratification of International Covenant on Economic, Social and Cultural Rights. Through Article 33 which was formulated in paragraph (3) of the Republic of Indonesia of the Republic of Indonesia and Article 28A and 28H paragraph (1) which was reduced by the Republic of Indonesia Law No. 11 of 1974 concerning Irrigation, Law No. 7 of 2004 and the Republic of Indonesia Law No. 17 of 2019, each of the implementing regulations such as PP Number 22 of 1982 concerning Water Management, PP RI No. 42 of 2008 concerning Management of Water Resources, PP Number 16 of 2005 concerning Drinking Water Supply System. At the Minister of Regulation Regulation, Born ESDM Candy Number 31 of 2018 concerning Guidelines for Determination of Land Water Conservation Zone and Pupr Candy Number 15 of 2018 concerning the Standard of Indonesian National Work Competency in Management of Drinking Water Supply System, PU Candy Number 2 Year 2017 concerning the Secretariat Organization and Work Procedure National SDA Council. Then the regional regulation on regional companies, for example in Makassar, was born regional regulation number 6 of 2016 concerning the non-cash investment in the Makassar City Government to the Makassar City PDAM. At the village regulations, for example in South Sumatra, Born Karang Agung Village Regulation Number 7 of 2018 concerning Conservation of Water Sources and Management and Utilization of Clean Water.

### **Suggestion**

It is expected that in the future, it will be realized to fulfill the rights to clean water as a basic rights of the people, then in every government at each level, it must take a full role in each policy preparation regarding the right to clean water. This is in order to maintain the responsibility of the State through the Government towards water resources in Indonesia.



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